

JK

1555

A7

1920



Class JH 1558

Book A7

1912a

Rules of the Supreme Court of the United States



Promulgated December 22, 1911

With Amendments of February 26,
April 1, and June 10, 1912



Washington, 1913

Rules of the Supreme Court of the United States

621
35



Promulgated December 22, 1911

With Amendments of February 26,
April 1, and June 10, 1912



Washington, 1913

JK 1555
.A7
1912a



D. OF D.
FEB 19 1913

Call, Mar. 1/3

INDEX TO RULES OF THE SUPREME COURT.

	Rules	Sec.	Page.
Adjournment.....	27	—	34
Admiralty, record in.....	8	6	15
Appearance of counsel.....	9	3	16
for plaintiff in error or appellant, no.....	16	—	24
defendant in error or appellee, no.....	17	—	24
either party, no.....	18	—	24
Appeals in cases involving jurisdiction of district court ..	32	—	36
Appeals under act of March 3, 1911.....	36	—	38
Appeals direct from district court, when and by whom			
allowed.....	36	1	38
bail to be allowed,			
when.....	36	2	39
Argument, oral.....	22	—	28
order of.....	22	1	28
time allowed for	22	3	28
on motions.....	6	2	9
printed.....	20	—	25
submission on.....	20	1	25
not received after submission.....	20	4	25
Assignment of errors.....	21	2, 4	26, 27
under act of March 3, 1911.....	35	1	37
Attachment for clerk's fees.....	10	8	18
Attorneys, admission of.....	2	1	7
oath of.....	2	2	7
Bail, when and how granted.....	36	2	39
Bill of exceptions.....	4	—	8
Briefs.....	21	—	26
contents of.....	21	2	26
time for filing by plaintiff in error or appellant.....	21	1	26
defendant in error or appellee	21	3	27
service on opposing counsel required	21	7	27
index to, when required, etc.....	21	8	27
for respondent on certiorari, when to be filed.....	37	3	40
form of printed.....	31	—	36
not received after argument.....	20	4	25
Cases involving same question may be heard together.....	26	8	33
passed, how restored to call.....	26	9	33
dismissal of, in vacation.....	28	—	34
Certiorari.....	14	—	20
Certiorari to Circuit Court of Appeals, regulations govern-			
ing applications for.....	37	3	40
Circuit Courts of Appeals, cases from, etc.....	37	—	39.
practice in	40	—	40
Citation, service of.....	8	5	14
Clerk.....	1	—	7
Clerk's fees, table of.....	24	7	30
attachment for.....	10	8	18
deposit for.....	10	1	16
Conference-room library.....	7	3	12
Costs of printing record.....	10	2, 6, 7	17, 18
how taxed.....	24	—	29
none recoverable in cases where United States is			
party.....	24	4	30

	Rules.	Sec.	Page.
Counsel, admission of	2	1	7
appearance of	9	3	16
no appearance of	18	—	24
two only to be heard on argument	22	2	28
time allowed for argument	22	3	28
motions	6	2	9
Custody of prisoners on habeas corpus	34	—	37
Damages for delay	23	2	29
Defendant, no appearance of	17	—	24
Death of a party	15	—	21
defendant in error or appellee after judgment in lower court	15	3	22
Deposit for clerk's fees	10	1	16
Dismissal in vacation	28	—	34
Docketing cases	9	—	15
by plaintiff in error or appellant	9	1	15
defendant in error or appellee	9	2	16
Docket, call of	26	—	32
day-call	26	2	32
Errors, assignment of	21	4	27
specification of	21	2	26
Evidence, new, how taken	12	1	19
in admiralty	12	2	20
in the record, objections to	13	—	20
Exceptions, bill of	4	—	8
Exhibits of material	33	—	36
Fees, table of clerk's	24	7	30
attachment for	10	8	18
security for	10	1	16
Habeas corpus, custody of prisoners on	34	—	37
Interest	23	—	28
in admiralty	23	4	29
in equity	23	3	29
at law	23	1	28
under act of March 3, 1911	38	—	40
Jurisdiction—cases involving district court	32	—	36
Law library	7	—	11
mode of obtaining books from, by counsel	7	1	11
clerk to deposit records in	7	2	12
of conference-room	7	3	12
List of cases in briefs, when required, etc	21	8	27
Mandates	39	—	40
Mandate in case dismissed	24	5	30
in vacation	28	—	34
Motions	6	—	9
to be in writing	6	1	9
notice of	6	3, 4	9, 10
time allowed for argument	6	2	9
to affirm	6	5	10
to dismiss	6	4	10

	Rules.	Sec.	Page.
Motions, notice and service of briefs.....	6	4	10
submission of	6	4	10
to advance.....	26	6	33
cases once adjudicated.....	26	4	33
criminal cases.....	26	3	33
revenue cases.....	26	5	33
cases involving jurisdiction of district court	32	—	36
Motion day.....	6	7	11
Opinions of the Supreme Court.....	25	—	31
court below to be annexed to record.....	8	2	14
Original papers not to be taken from court room or clerk's office.....	1	2	7
from court below.....	8	4	14
Parties, death of.....	15	—	21
Petitions for certiorari to C. C. A.—regulations governing.	37	3	40
Plaintiff in error or appellant, no appearance of.....	16	—	24
Practice.....	3	—	8
Process, form of.....	5	1	9
service of.....	5	2, 3	9
Record.....	8	—	12
return of.....	8	1	12
designated record from court below	8	1	12
to contain all necessary papers in full.....	8	3	14
opinion of court below.....	8	2	14
translations of papers in foreign language	11	—	19
printed under supervision of clerk	10	5	17
printed form of.....	31	—	36
printing parts of.....	10	9	18
cost of	10	2	17
certiorari for diminution of.....	14	—	20
in admiralty cases.....	8	6	15
in cases coming up under act of March 3, 1911....	37	—	39
how printed.....	35	2	38
Rehearing.....	30	—	35
Representatives of deceased parties appearing.....	15	1	21
not appearing.....	15	2	22
Return to writ of error.....	8	—	12
day.....	8	5	14
Revenue cases advanced on motion.....	26	5	33
Second term, neither party ready for trial.....	19	—	24
Security for clerk's fees.....	10	1	16
Subpœna, service of.....	5	3	9
Supersedeas.....	29	—	34
Translations.....	11	—	19
Writ of error, return to.....	8	—	12
in cases involving jurisdiction of district courts.....	32	—	36
under act of March 3, 1911.....	36	—	38

RULES OF THE SUPREME COURT OF THE UNITED STATES.

1.

CLERK.

1. The clerk of this court shall reside and keep the office at the seat of the National Government, and he shall not practice, either as attorney or counsellor, in this court, or in any other court, while he shall continue to be clerk of this court.

2. The clerk shall not permit any original record or paper to be taken from the court room, or from the office, without an order from the court, except as provided by Rule 10.

2.

ATTORNEYS AND COUNSELLORS.

1. It shall be requisite to the admission of attorneys or counsellors to practice in this court, that they shall have been such for three years past in the highest courts of the States to which they respectively belong, and that their private and professional characters shall appear to be fair.

2. They shall respectively take and subscribe the following oath or affirmation, viz:

I, _____, do solemnly swear (or affirm) that I will demean myself, as an attorney and counsellor of this court, uprightly, and according to law; and that I will support the Constitution of the United States.

3.

PRACTICE.

This court considers the former practice of the courts of king's bench and of chancery, in England, as affording outlines for the practice of this court; and will, from time to time, make such alterations therein as circumstances may render necessary.

4.

BILL OF EXCEPTIONS.

The judges of the district courts in allowing bills of exception shall give effect to the following rules:

1. No bill of exceptions shall be allowed which shall contain the charge of the court at large to the jury in trials at common law, upon any general exception to the whole of such charge. But the party excepting shall be required to state distinctly the several matters of law in such charge to which he excepts; and those matters of law, and those only, shall be inserted in the bill of exceptions and allowed by the court.

2. Only so much of the evidence shall be embraced in a bill of exceptions as may be necessary to present clearly the questions of law involved in the rulings to which exceptions are reserved, and such evidence as is embraced therein shall be set forth in condensed and narrative form, save as a proper understanding of the questions presented may require that parts of it be set forth otherwise.

5.

PROCESS.

1. All process of this court shall be in the name of the President of the United States, and shall contain the Christian names, as well as the surnames, of the parties.

2. When process at common law or in equity shall issue against a State, the same shall be served on the governor, or chief executive magistrate, and attorney-general of such State.

3. Process of subpœna, issuing out of this court, in any suit in equity, shall be served on the defendant sixty days before the return day of the said process; and if the defendant, on such service of the subpœna, shall not appear at the return day, the complainant shall be at liberty to proceed *ex parte*.

6.

MOTIONS.

1. All motions to the court shall be reduced to writing, and shall contain a brief statement of the facts and objects of the motion.

2. Forty-five minutes on each side shall be allowed to the argument of a motion, and no more, without special leave of the court, granted before the argument begins.

3. No motion to dismiss, except on special assignment by the court, shall be heard, unless previous notice has been given to the adverse party, or the counsel or attorney of such party.

4. All motions to dismiss writs of error and appeals, except motions to docket and dismiss under Rule 9, must be submitted in the first instance on printed briefs or arguments. If the court desires further argument on that subject, it will be ordered in connection with the hearing on the merits. The party moving to dismiss shall serve notice of the motion, with a copy of his brief of argument, on the counsel for plaintiff in error or appellant of record in this court, at least three weeks before the time fixed for submitting the motion, in all cases except where the counsel to be notified resides west of the Rocky Mountains, in which case the notice shall be at least thirty days. Affidavits of the deposit in the mail of the notice and brief to the proper address of the counsel to be served, duly post-paid, at such time as to reach him by due course of mail, the three weeks or thirty days before the time fixed by the notice, will be regarded as *prima facie* evidence of service on counsel who reside without the District of Columbia. On proof of such service, the motion will be considered, unless, for satisfactory reasons, further time be given by the court to either party.

5. The court in any pending cause will receive a motion to affirm on the ground that it is manifest that the writ or appeal was taken for delay only, or that the questions on which the decision of the cause depend are so frivolous as not to need further argument. The same procedure shall apply to and

control such motions as is provided for in cases of motions to dismiss under paragraph 4 of this rule.

6. Although the court upon consideration of a motion to dismiss or a motion to affirm may refuse to grant the motion, it may nevertheless, if the conclusion is arrived at that the case is of such a character as not to justify extended argument, order the cause transferred for hearing to a summary docket. The hearing of the causes on such docket will be expedited, the court providing from time to time for such speedy disposition of the docket as the regular order of business may permit, and on the hearing of such causes one-half hour will be allowed each side for oral argument.

7. The court will not hear arguments on Saturday (unless for special cause it shall order to the contrary), but will devote that day to the other business of the court. The motion day shall be Monday of each week; and motions not required by the rules of the court to be put on the docket shall be entitled to preference immediately after the reading of opinions, if such motions shall be made before the court shall have entered upon the hearing of a case upon the docket.

7.

LAW LIBRARY.

1. During the session of the court, any gentleman of the bar having a case on the docket, and wishing to use any book or books in the law library, shall be

at liberty, upon application to the clerk of the court, to receive an order to take the same (not exceeding at any one time three) from the library, he being thereby responsible for the due return of the same within a reasonable time, or when required by the clerk. And in case the same shall not be so returned, the party receiving the same shall be responsible for and forfeit and pay twice the value thereof, and also one dollar per day for each day's detention beyond the limited time.

2. The clerk shall deposit in the law library, to be there carefully preserved, one copy of the printed record in every case submitted to the court for its consideration, and of all printed motions, briefs, or arguments filed therein.

3. The marshal shall take charge of the books of the court, together with such of the duplicate law books as Congress may direct to be transferred to the court, and arrange them in the conference room, which he shall have fitted up in a proper manner; and he shall not permit such books to be taken therefrom by any one except the justices of the court.

8.

WRIT OF ERROR AND APPEAL, RETURN AND RECORD.

1. The clerk of the court to which any writ of error may be directed shall make return of the same, by transmitting a true copy of the record, and of the assignment of errors, and of all proceedings in the case, under his hand and the seal of the court.

In order to enable the Clerk to perform such duty and for the purpose of reducing the size of transcripts of record in cases brought to this Court by appeal or writ of error, by eliminating all papers not necessary to the consideration of the questions to be reviewed, it shall be the duty of the appellant or plaintiff in error or his attorney to file with the clerk of the lower court, together with proof or acknowledgment of service of a copy on the appellee or defendant in error, or his counsel, a *praecipe* which shall indicate the portions of the record to be incorporated into the transcript of the record on such appeal or writ of error. Should the appellee or defendant in error, or his counsel, desire additional portions of the record incorporated into the transcript of the record to be filed in this Court, he shall file with the clerk of the lower court his *praecipe* also, within ten days thereafter, (unless the time shall be enlarged by a judge of the lower court or by a Justice of this Court), indicating such additional portions of the record desired by him.

The clerk of the lower court shall transmit to this Court as the transcript of the record in the case only the portions of the record below designated by both parties as above provided.

The parties or their counsel, however, may agree by written stipulation to be filed with the clerk of the lower court the portions of the record which shall constitute the transcript of record on appeal or writ of error, and the clerk in such case shall transmit only the papers designated in such stipulation.

If this Court shall find that portions of the record unnecessary to a proper presentation of the case have been incorporated into the transcript by either party, the Court may order that the whole or any part of the Clerk's fee for supervising the printing and of the cost of printing the record be paid by the offending party.

2. In all cases brought to this court, by writ of error or appeal, to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

3. No case will be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing in this court, shall be filed.

4. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any district court, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safe-keeping, transporting, and return of such original papers as to him may seem proper, and this court will receive and consider such original papers in connection with the transcript of the proceedings.

5. All appeals, writs of error, and citations must be made returnable not exceeding thirty days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before

the return day, except in writs of error and appeals from California, Oregon, Nevada, Washington, New Mexico, Utah, Arizona, Montana, Wyoming, North Dakota, South Dakota, Alaska, Idaho, Hawaii and Porto Rico, when the time shall be extended to sixty days and from the Philippine Islands to one hundred and twenty days.

6. The record in cases of admiralty and maritime jurisdiction, when under the requirements of law the facts have been found in the court below, and the power of review is limited to the determination of questions of law arising on the record, shall be confined to the pleadings, the findings of fact, and conclusions of law thereon, the bills of exceptions, the final judgment or decree, and such interlocutory orders and decrees as may be necessary to a proper review of the case.

9.

DOCKETING CASES.

1. It shall be the duty of the plaintiff in error or appellant to docket the case and file the record thereof with the clerk of this court by or before the return day, whether in vacation or in term time. But, for good cause shown, the justice or judge who signed the citation, or any justice of this court, may enlarge the time, by or before its expiration, the order of enlargement to be filed with the clerk of this court. If the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the cause docketed and dismissed upon

producing a certificate, whether in term time or vacation, from the clerk of the court wherein the judgment or decree was rendered, stating the case and certifying that such writ of error or appeal has been duly sued out or allowed. And in no case shall the plaintiff in error or appellant be entitled to docket the case and file the record after the same shall have been docketed and dismissed under this rule, unless by order of the court.

2. But the defendant in error or appellee may, at his option, docket the case and file a copy of the record with the clerk of this court; and if the case is docketed and a copy of the record filed with the clerk of this court by the plaintiff in error or appellant within the period of time above limited and prescribed by this rule, or by the defendant in error or appellee at any time thereafter, the case shall stand for argument.

3. Upon the filing of the transcript of a record brought up by writ of error or appeal, the appearance of the counsel for the party docketing the case shall be entered.

10.

PRINTING RECORDS.

1. In all cases the plaintiff in error or appellant, on docketing a case and filing the record, shall make such cash deposit with the clerk for the payment of his fees as he may require or otherwise satisfy him in that behalf.

2. The clerk shall cause an estimate to be made of the cost of printing the record, and of his fee for preparing it for the printer and supervising the printing, and shall notify to the party docketing the case the amount of the estimate. If he shall not pay it within a reasonable time, and for want of such payment the record shall not have been printed when a case is reached in the regular call of the docket, the case shall be dismissed.

3. Upon payment of the amount estimated by the clerk, thirty copies of the record shall be printed, under his supervision, for the use of the court and of counsel.

4. In cases of appellate jurisdiction the original transcript on file shall be taken by the clerk to the printer. But the clerk shall cause copies to be made for the printer of such original papers, sent up under Rule 8, section 4, as are necessary to be printed; and of the whole record in cases of original jurisdiction.

5. The clerk shall supervise the printing, and see that the printed copy is properly indexed. He shall distribute the printed copies to the justices and the reporter, from time to time, as required, and a copy to the counsel for the respective parties.

6. If the actual cost of printing the record, together with the fee of the clerk, shall be less than the amount estimated and paid, the amount of the difference shall be refunded by the clerk to the party paying it. If the actual cost and clerk's fee shall exceed

the estimate, the amount of the excess shall be paid to the clerk before the delivery of a printed copy to either party or his counsel.

7. In case of reversal, affirmance, or dismissal, with costs, the amount of the cost of printing the record and of the clerk's fee shall be taxed against the party against whom costs are given, and shall be inserted in the body of the mandate or other proper process.

8. Upon the clerk's producing satisfactory evidence, by affidavit or the acknowledgment of the parties or their sureties, of having served a copy of the bill of fees due by them, respectively, in this court, on such parties or their sureties, an attachment shall issue against such parties or sureties, respectively, to compel payment of said fees.

9. The plaintiff in error or appellant may, within ninety days after filing the record in this court, file with the clerk a statement of the errors on which he intends to rely, and of the parts of the record which he thinks necessary for the consideration thereof, with proof of service of the same on the adverse party. The adverse party, within ninety days thereafter, may designate in writing, filed with the clerk, additional parts of the record which he thinks material; and, if he shall not do so, he shall be held to have consented to a hearing on the parts designated by the plaintiff in error or appellant. If parts of the record shall be so designated by one or both of the parties, the clerk shall print those parts only; and the court will consider nothing but those parts of the record, and the errors so stated. If at

the hearing it shall appear that any material part of the record has not been printed, the writ of error or appeal may be dismissed, or such other order made as the circumstances may appear to the court to require. If the defendant in error or appellee shall have caused unnecessary parts of the record to be printed, such order as to costs may be made as the court shall think proper.

The fees of the clerk under Rule 24, section 7, shall be computed, as at present, on the folios in the record as filed, and shall be in full for the performance of his duties in the execution hereof.

11.

TRANSLATIONS.

Whenever any record transmitted to this court upon a writ of error or appeal shall contain any document, paper, testimony, or other proceedings in a foreign language, and the record does not also contain a translation of such document, paper, testimony, or other proceedings, made under the authority of the inferior court, or admitted to be correct, the record shall not be printed; but the case shall be reported to this court by the clerk, and the court will order that a translation be supplied and inserted in the record.

12.

FURTHER PROOF.

1. In all cases where further proof is ordered by the court, the depositions which may be taken shall be by a commission, to be issued from this court, or from any district court of the United States.

2. In all cases of admiralty and maritime jurisdiction, where new evidence shall be admissible in this court, the evidence by testimony of witnesses shall be taken under a commission to be issued from this court, or from any district court of the United States, under the direction of any judge thereof; and no such commission shall issue but upon interrogatories, to be filed by the party applying for the commission, and notice to the opposite party or his agent or attorney, accompanied with a copy of the interrogatories so filed, to file cross-interrogatories within twenty days from the service of such notice: Provided, however, That nothing in this rule shall prevent any party from giving oral testimony in open court in cases where by law it is admissible.

13.

OBJECTIONS TO EVIDENCE IN THE RECORD.

In all cases of equity or admiralty jurisdiction, heard in this court, no objection shall hereafter be allowed to be taken to the admissibility of any deposition, deed, grant, or other exhibit found in the record as evidence, unless objection was taken thereto in the court below and entered of record; but the same shall otherwise be deemed to have been admitted by consent.

14.

CERTIORARI.

No *certiorari* for diminution of the record will be hereafter awarded in any case, unless a motion therefor shall be made in writing, and the facts on

which the same is founded shall, if not admitted by the other party, be verified by affidavit. And all motions for *certiorari* must be made at the first term of the entry of the case; otherwise, the same will not be granted, unless upon special cause shown to the court, accounting satisfactorily for the delay.

15.

DEATH OF A PARTY.

1. Whenever, pending a writ of error or appeal in this court, either party shall die, the proper representatives in the personalty or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the suit, and thereupon the case shall be heard and determined as in other cases; and if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon, on motion, obtain an order that unless such representatives shall become parties within the first ten days of the ensuing term, the party moving for such order, if defendant in error or appellee shall be entitled to have the writ of error or appeal dismissed; and if the party so moving shall be plaintiff in error or appellant he shall be entitled to open the record, and on hearing have the judgment or decree reversed, if it be erroneous: Provided, however, That a copy of every such order shall be printed in some newspaper of general circulation within the State, Territory, or District from which the case is brought, for three

successive weeks, at least sixty days before the beginning of the term of the Supreme Court then next ensuing.

2. When the death of a party is suggested, and the representatives of the deceased do not appear by the tenth day of the second term next succeeding the suggestion, and no measures are taken by the opposite party within that time to compel their appearance, the case shall abate.

3. When either party to a suit in a court of the United States shall desire to prosecute a writ of error or appeal to the Supreme Court of the United States, from any final judgment or decree, rendered in such court, and at the time of suing out such writ of error or appeal the other party to the suit shall be dead and have no proper representative within the jurisdiction of the court which rendered such final judgment or decree, so that the suit can not be revived in that court, but shall have a proper representative in some State or Territory of the United States, the party desiring such writ of error or appeal may procure the same, and may have proceedings on such judgment or decree superseded or stayed in the same manner as is now allowed by law in other cases, and shall thereupon proceed with such writ of error or appeal as in other cases. And within thirty days after the commencement of the term to which such writ of error or appeal is returnable, the plaintiff in error or appellant shall make a suggestion to the court, supported by affidavit, that the said party was dead when the writ of error or

appeal was taken or sued out, and had no proper representative within the jurisdiction of the court which rendered said judgment or decree, so that the suit could not be revived in that court, and that said party had a proper representative in some State or Territory of the United States, and stating therein the name and character of such representative, and the State or Territory in which such representative resides; and, upon such suggestion, he may, on motion, obtain an order that, unless such representative shall make himself a party within the first ten days of the ensuing term of the court, the plaintiff in error or appellant shall be entitled to open the record, and, on hearing, have the judgment or decree reversed, if the same be erroneous: Provided, however, That a proper citation reciting the substance of such order shall be served upon such representative, either personally or by being left at his residence, at least sixty days before the beginning of the term of the Supreme Court then next ensuing: And provided, also, That in every such case if the representative of the deceased party does not appear by the tenth day of the term next succeeding said suggestion, and the measures above provided to compel the appearance of such representative have not been taken within time as above required, by the opposite party, the case shall abate: And provided, also, That the said representative may at any time before or after said suggestion come in and be made a party to the suit, and thereupon the case shall proceed, and be heard and determined as in other cases.

16.

NO APPEARANCE OF PLAINTIFF IN ERROR OR APPELLANT.

Where no counsel appears and no brief has been filed for the plaintiff in error or appellant, when the case is called for trial, the defendant in error or appellee may have the plaintiff in error or appellant called and the writ of error or appeal dismissed, or may open the record and pray for an affirmance.

17.

NO APPEARANCE OF DEFENDANT IN ERROR OR APPELLEE.

Where the defendant in error or appellee fails to appear when the case is called for trial, the court may proceed to hear an argument on the part of the plaintiff in error or appellant and to give judgment according to the right of the case.

18.

NO APPEARANCE OF EITHER PARTY.

When a case is reached in the regular call of the docket, and there is no appearance for either party, the case shall be dismissed at the cost of the plaintiff in error or appellant.

19.

NEITHER PARTY READY AT SECOND TERM.

When a case is called for argument at two successive terms, and upon the call at the second term neither party is prepared to argue it, it shall be dis-

missed at the cost of the plaintiff in error or appellant, unless sufficient cause is shown for further postponement.

20.

PRINTED ARGUMENTS.

1. In all cases brought here on writ of error, appeal, or otherwise, the court will receive printed arguments without regard to the number of the case on the docket, if the counsel on both sides shall choose to submit the same within the first ninety days of the term; and, in addition, appeals from the Court of Claims may be submitted by both parties within thirty days after they are docketed, but not after the first day of April; but thirty copies of the arguments, signed by attorneys or counsellors of this court, must be first filed.

2. When a case is reached in the regular call of the docket, and a printed argument shall be filed for one or both parties, the case shall stand on the same footing as if there were an appearance by counsel.

3. When a case is taken up for trial upon the regular call of the docket, and argued orally in behalf of only one of the parties, no printed argument for the opposite party will be received, unless it is filed before the oral argument begins, and the court will proceed to consider and decide the case upon the *ex parte* argument.

4. No brief or argument will be received, either through the clerk or otherwise, after a case has been argued or submitted, except upon leave granted in open court after notice to opposing counsel.

21.

BRIEFS.

1. The counsel for plaintiff in error or appellant shall file with the clerk of the court, at least three weeks before the case is called for argument, thirty copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side.

2. This brief shall contain, in the order here stated—

(1) A concise abstract, or statement of the case, presenting succinctly the questions involved and the manner in which they are raised.

(2) A specification of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be urged; and in cases brought up by appeal the specification shall state, as particularly as may be, in what the decree is alleged to be erroneous. When the error alleged is to the admission or to the rejection of evidence, the specification shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the specification shall set out the part referred to *totidem verbis*, whether it be instructions given or instructions refused. When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report and the action of the court upon it.

(3) A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record

and the authorities relied upon in support of each point. When a statute of a State is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

3. The counsel for a defendant in error or an appellee shall file with the clerk thirty printed copies of his argument, at least one week before the case is called for hearing. His brief shall be of like character with that required of the plaintiff in error or appellant, except that no specification of errors shall be required, and no statement of the case, unless that presented by the plaintiff in error or appellant is controverted.

4. When there is no assignment of errors, as required by section 997 of the Revised Statutes, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded; but the court, at its option, may notice a plain error not assigned or specified.

5. When, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion; and when a defendant in error or an appellee is in default, he will not be heard, except on consent of his adversary, and by request of the court.

6. When no oral argument is made for one of the parties, only one counsel will be heard for the adverse party.

7. No brief or printed argument, required by the foregoing sections, shall be filed by the clerk unless the same shall be accompanied by satisfactory proof of service upon counsel for the adverse party.

8. Every brief of more than twenty pages shall contain on its front fly leaves a subject index with page

references, the subject index to be supplemented by a list of all cases referred to, alphabetically arranged, together with references to pages where the cases are cited.

22.

ORAL ARGUMENTS.

1. The plaintiff in error or appellant in this court shall be entitled to open and conclude the argument of the case. But when there are cross-appeals they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument.

2. Only two counsel will be heard for each party on the argument of a case.

3. One and one-half hours on each side will be allowed for the argument, and no more, without special leave of the court, granted before the argument begins. But in cases certified from the Circuit Courts of Appeals, cases involving solely the jurisdiction of the court below, and cases under the act of March 2, 1907, 34 Stat., 1246, forty-five minutes only on each side will be allowed for the argument unless the time be extended. The time thus allowed may be apportioned between the counsel on the same side, at their discretion; provided, always, that a fair opening of the case shall be made by the party having the opening and closing arguments.

23.

INTEREST.

1. In cases where a writ of error is prosecuted to this court, and the judgment of the inferior court is affirmed, the interest shall be calculated and levied, from the date of the judgment below until the same is paid, at the same rate that similar judgments bear

interest in the courts of the State where such judgment is rendered.

2. In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages at a rate not exceeding 10 per cent., in addition to interest, shall be awarded upon the amount of the judgment.

3. The same rule shall be applied to decrees for the payment of money in cases in equity, unless otherwise ordered by this court.

4. In cases in admiralty, damages and interest may be allowed if specially directed by the court.

24.

COSTS.

1. In all cases where any suit shall be dismissed in this court, costs shall be allowed to the defendant in error or appellee, unless otherwise agreed by the parties, except where the dismissal shall be for want of jurisdiction, when the costs incident to the motion to dismiss shall be allowed.

2. In all cases of affirmance of any judgment or decree in this court, costs shall be allowed to the defendant in error or appellee, unless otherwise ordered by the court.

3. In cases of reversal of any judgment or decree in this court, costs shall be allowed to the plaintiff in error or appellant, unless otherwise ordered by the court. The cost of the transcript of the record from the court below shall be a part of such costs, and be taxable in that court as costs in the case.

4. Neither of the foregoing sections shall apply to cases where the United States are a party; but in such cases no costs shall be allowed in this court for or against the United States.

5. In all cases of the dismissal of any suit in this court, it shall be the duty of the clerk to issue a mandate, or other proper process, in the nature of a *procedendo*, to the court below, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain.

6. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

7. In pursuance of the act of March 3, 1883, authorizing and empowering this court to prepare a table of fees to be charged by the clerk of this court, the following table is adopted:

For docketing a case and filing and indorsing the transcript of the record, five dollars.

For entering an appearance, twenty-five cents.

For entering a continuance, twenty-five cents.

For filing a motion, order, or other paper, twenty-five cents.

For entering any rule, or for making or copying any record or other paper, twenty cents per folio of each one hundred words.

For transferring each case to a subsequent docket and indexing the same, one dollar.

For entering a judgment or decree, one dollar.

For every search of the records of the court, one dollar.

For a certificate and seal, two dollars.

For receiving, keeping, and paying money in pursuance of any statute or order of court, two per cent. on the amount so received, kept, and paid.

For an admission to the bar and certificate under seal, ten dollars.

For preparing the record or a transcript thereof for the printer, indexing the same, supervising the printing, and distributing the printed copies to the justices, the reporter, the law library, and the parties or their counsel, fifteen cents per folio; but when the necessary printed copies of the record, as printed for the use of the lower court, shall be furnished, the fee for supervising shall be five cents per folio.

For making a manuscript copy of the record, when required under Rule 10, twenty cents per folio, but nothing in addition for supervising the printing.

For issuing a writ of error and accompanying papers, five dollars.

For a mandate or other process, five dollars.

For filing briefs, five dollars for each party appearing.

For every printed copy of any opinion of the court or any justice thereof, certified under seal, two dollars.

25.

OPINIONS OF THE COURT.

1. All opinions delivered by the court shall, immediately upon the delivery thereof, be handed to the

clerk to be printed. And it shall be the duty of the clerk to cause the same to be forthwith printed, and to deliver a copy to the reporter as soon as the same shall be printed.

2. The original opinions of the court shall be filed with the clerk of this court for preservation.

3. Opinions printed under the supervision of the justices delivering the same need not be copied by the clerk into a book of records; but at the end of each term the clerk shall cause such printed opinions to be bound in a substantial manner into one or more volumes, and when so bound they shall be deemed to have been recorded.

26.

CALL AND ORDER OF THE DOCKET.

1. The court, on the second day in each term, will commence calling the cases for argument in the order in which they stand on the docket, and proceed from day to day during the term in the same order (except as hereinafter provided); and if the parties, or either of them, shall be ready when the case is called, the same will be heard; and if neither party shall be ready to proceed in the argument, the case shall be continued to the next term of the court unless some good and satisfactory reason to the contrary shall be shown to the court.

2. Ten cases only shall be considered as liable to be called on each day during the term. But on the coming in of the court on each day the entire number of such ten cases will be called, with a view to the disposition of such of them as are not to be argued.

3. Criminal cases may be advanced by leave of the court on motion of either party.

4. Cases once adjudicated by this court upon the merits, and again brought up by writ of error or appeal, may be advanced by leave of the court on motion of either party.

5. Revenue and other cases in which the United States are concerned, which also involve or affect some matter of general public interest, or which may be entitled to precedence under the provisions of any act of Congress, may also by leave of the court be advanced on motion of the Attorney-General.

6. All motions to advance cases must be printed, and must contain a brief statement of the matter involved, with the reasons for the application.

7. No other case will be taken up out of the order on the docket, or be set down for any particular day, except under special and peculiar circumstances to be shown to the court.

8. Two or more cases, involving the same question, may, by the leave of the court, be heard together, but they must be argued as one case.

9. If, after a case has been passed, the parties shall desire to have it heard, they may file with the clerk their joint request to that effect, and the case shall then be by him reinstated for call ten cases after that under argument, or next to be called at the end of the day the request is filed. If the parties will not unite in such a request, either may move to take up the case, and it shall then be assigned to such place upon the docket as the court may direct.

10. No stipulation to pass a case will be recognized as binding upon the court. A case can only be so passed upon application made and leave granted in open court.

27.

ADJOURNMENT.

The court will, at every term, announce on what day it will adjourn at least ten days before the time which shall be fixed upon, and the court will take up no case for argument, nor receive any case upon printed briefs, within three days next before the day fixed upon for adjournment.

28.

DISMISSING CASES IN VACATION.

Whenever the plaintiff and defendant in a writ of error pending in this court, or the appellant and appellee in an appeal, shall in vacation, by their attorneys of record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms on which it is to be dismissed as to costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk to enter the case dismissed, and to give to either party requesting it a copy of the agreement filed; but no mandate or other process shall issue without an order of the court.

29.

SUPERSEDEAS.

Supersedeas bonds in the district courts and Circuit Courts of Appeals must be taken, with good and

sufficient security, that the plaintiff in error or appellant shall prosecute his writ or appeal to effect, and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal; but in all suits where the property in controversy necessarily follows the event of the suit, as in real actions, replevin, and in suits on mortgages, or where the property is in the custody of the marshal under admiralty process, as in case of capture or seizure, or where the proceeds thereof, or a bond for the value thereof, is in the custody or control of the court, indemnity in all such cases is only required in an amount sufficient to secure the sum recovered for the use and detention of the property, and the costs of the suit, and just damages for delay, and costs and interest on the appeal.

30.

REHEARING.

A petition for rehearing after judgment can be presented only at the term at which judgment is entered, unless by special leave granted during the term; and must be printed and briefly and distinctly state its grounds, and be supported by certificate of counsel; and will not be granted, or permitted to be argued, unless a justice who concurred in the judgment desires it, and a majority of the court so determines.

31.

FORM OF PRINTED RECORDS AND BRIEFS.

All records, arguments, and briefs, printed for the use of the court, must be in such form and size that they can be conveniently bound together, so as to make an ordinary octavo volume; and, as well as all quotations contained therein, and the covers thereof, must be printed in clear type (never smaller than small pica) and on unglazed paper.

32.

WRITS OF ERROR AND APPEALS IN CASES INVOLVING JURISDICTION OF LOWER COURT.

Cases brought to this court by writ of error or appeal, where the only question in issue is the question of the jurisdiction of the court below, will be advanced on motion, and heard under the rules prescribed by Rule 6, in regard to motions to dismiss writs of error and appeals.

33.

MODELS, DIAGRAMS, AND EXHIBITS OF MATERIAL.

1. Models, diagrams, and exhibits of material forming part of the evidence taken in the court below, in any case pending in this court, on writ of error or appeal, shall be placed in the custody of the marshal of this court at least one month before the case is heard or submitted.

2. All models, diagrams, and exhibits of material, placed in the custody of the marshal for the inspection of the court on the hearing of a case, must be taken away by the parties within one month after the case is decided. When this is not done, it shall

be the duty of the marshal to notify the counsel in the case, by mail or otherwise, of the requirements of this rule; and if the articles are not removed within a reasonable time after the notice is given, he shall destroy them, or make such other disposition of them as to him may seem best.

34.

CUSTODY OF PRISONERS ON HABEAS CORPUS.

1. Pending an appeal from the final decision of any court or judge declining to grant the writ of habeas corpus, the custody of the prisoner shall not be disturbed.

2. Pending an appeal from the final decision of any court or judge discharging the writ after it has been issued, the prisoner shall be remanded to the custody from which he was taken by the writ, or shall, for good cause shown, be detained in custody of the court or judge, or be enlarged upon recognizance as hereinafter provided.

3. Pending an appeal from the final decision of any court or judge discharging the prisoner, he shall be enlarged upon recognizance, with surety, for appearance to answer the judgment of the appellate court, except where, for special reasons, sureties ought not to be required.

35.

ASSIGNMENT OF ERRORS.

1. Where an appeal or a writ of error is taken from a district court direct to this court, under section 238 of the act entitled "An act to codify, revise, and amend the laws relating to the judiciary,"

approved March 3, 1911, chapter 231, the plaintiff in error or appellant shall file with the clerk of the court below, with his petition for the writ of error or appeal, an assignment of errors, which shall set out separately and particularly each error asserted and intended to be urged. No writ of error or appeal shall be allowed until such assignment of errors shall have been filed. When the error alleged is to the admission or to the rejection of evidence, the assignment of errors shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the assignment of errors shall set out the part referred to *totidem verbis*, whether it be in instructions given or in instructions refused. Such assignment of errors shall form part of the transcript of the record, and be printed with it. When this is not done counsel will not be heard, except at the request of the court; and errors not assigned according to this rule will be disregarded, but the court, at its option, may notice a plain error not assigned.

2. The plaintiff in error or appellant shall cause the record to be printed, according to the provisions of sections 2, 3, 4, 5, 6, and 9, of Rule 10.

36.

APPEALS AND WRITS OF ERROR FROM DISTRICT COURTS.

1. An appeal or a writ of error from a district court direct to this court, in the cases provided for in §§ 238 and 252 of the act entitled, "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, chapter

231, may be allowed, in term time or in vacation by any justice of this court, or by any circuit judge assigned to the district court, or by any district judge within his district, and the proper security be taken and the citation signed by him, and he may also grant a supersedeas and stay of execution or of proceedings, pending such writ of error or appeal.

2. Where such writ of error is allowed in the case of a conviction of an infamous crime, or in any other criminal case in which it will lie under section 238, the district court, or any judge thereof, or any justice of this court, or any circuit judge assigned to the district court, shall have power, after the citation is served, to admit the accused to bail in such amount as may be fixed.

37.

CASES FROM CIRCUIT COURTS OF APPEALS.

1. Where, under section 239 of the act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, chapter 231, a Circuit Court of Appeals shall certify to this court a question or proposition of law, concerning which it desires the instruction of this court for its proper decision, the certificate shall contain a proper statement of the facts on which such question or proposition of law arises.

2. If application is thereupon made to this court that the whole record and cause may be sent up to it for its consideration, the party making such application shall, as a part thereof, furnish this court with a certified copy of the whole of said record.

3. Where an application is submitted to this court for a writ of certiorari to review a decision of a Circuit Court of Appeals or any other court, it shall be necessary for the petitioner to furnish as an exhibit to the petition a certified copy of the entire transcript of record of the case, including the proceedings in the court to which the writ of certiorari is asked to be directed. The petition shall contain only a summary and short statement of the matter involved and the general reasons relied on for the allowance of the writ. A failure to comply with this provision will be deemed a sufficient reason for denying the petition. Thirty printed copies of such petition and of any brief deemed necessary shall be filed. Notice of the date of submission of the petition, together with a copy of the petition and brief, if any, in support of the same shall be served on the counsel for the respondent at least two weeks before such date in all cases except where the counsel to be notified resides west of the Rocky Mountains, in which cases the time shall be at least three weeks. The brief for the respondent, if any, shall be filed at least three days before the date fixed for the submission of the petition. Oral argument will not be permitted on such petitions, and no petition will be received within three days next before the day fixed upon for the adjournment of the court for the term.

38.

INTEREST, COST, AND FEES.

The provisions of Rules 23 and 24 of this court, in regard to interest and costs and fees, shall apply to writs of error and appeals and reviews under the provisions of sections 238, 239, 240, and 241 of the act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, chapter 231.

39.

MANDATES.

Mandates shall issue as of course after the expiration of thirty days from the day the judgment or decree is entered, unless the time is enlarged by order of the court, or of a justice thereof when the court is not in session, but during the term.

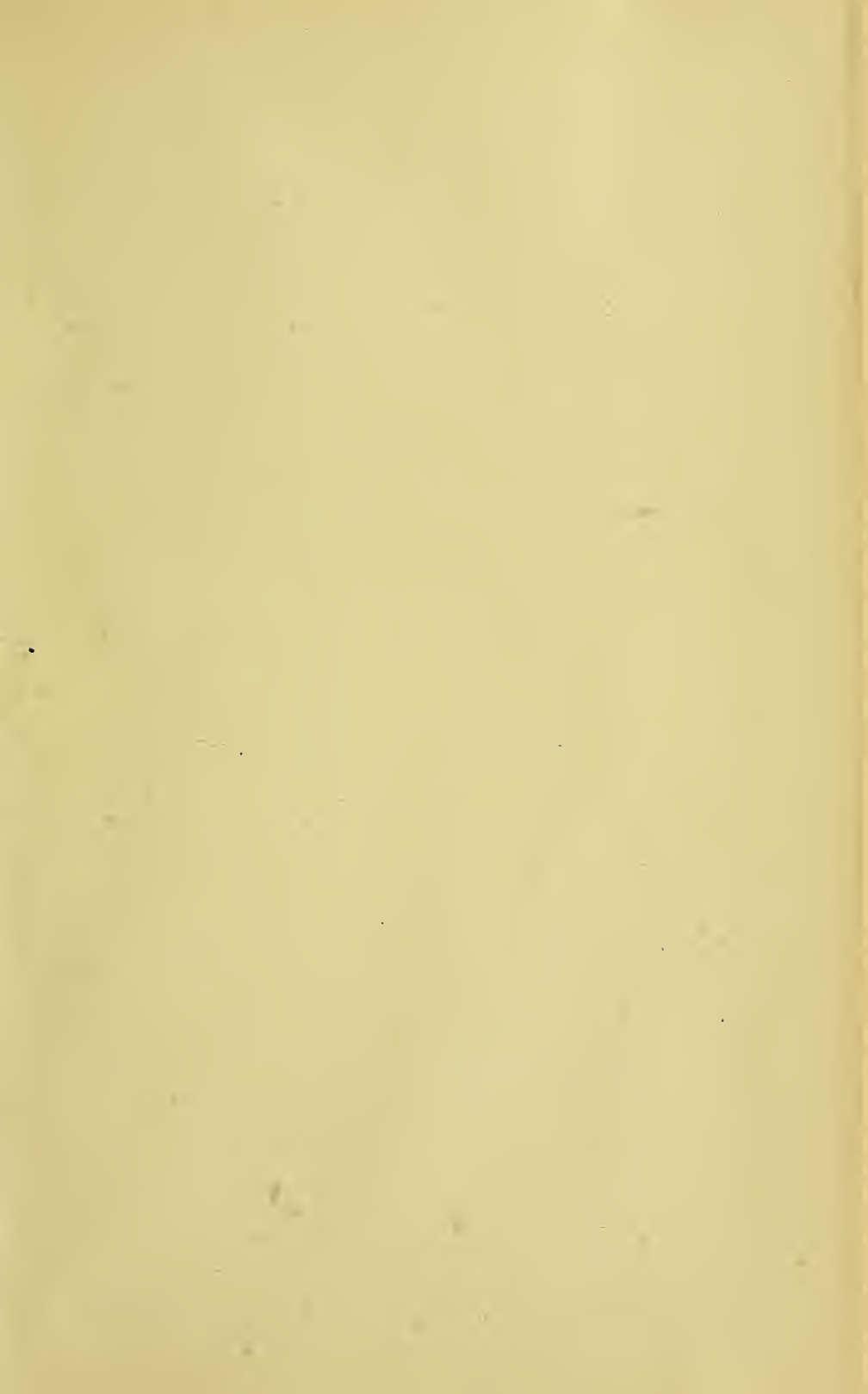
40.

PRACTICE IN CASES FROM CIRCUIT COURTS OF APPEALS.

The provisions of these rules relating to the practice on direct writs of error to and appeals from the district courts shall also be deemed to relate to and cover the practice on writs of error to and appeals from the Circuit Court of Appeals.







LIBRARY OF CONGRESS



0 012 605 808 1

